



***First Advantage***<sup>SM</sup>

Occupational Health Group  
PO Box 2430, Bethesda, MD 20817  
TEL: 301.571.0067 ▼ FAX: 301.571.0097  
[www.fadv.com](http://www.fadv.com) ▼ NASDAQ: FADV

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**House Energy and Commerce Committee**

**Testimony**

**Josephine Elizabeth Kenney, J.D.**

**Senior Vice President of Compliance**

**OHG/BSG**

**Employment Screening Services Division**

**First Advantage Corporation**

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**Testimony**

**Introduction**

The anti-drug testing products available through the Internet and the detoxification products sold in retail stores are undermining the efforts of the Drug and Alcohol Testing Industry Service Agents to assist Employers in the effective administration of both Regulated and Non-Regulated Drug Free Workplace Programs.

**Discussion/History**

In the early days of drug testing for me as a service provider there were two types of results: negative and positive (1990 –mid 90's). Over time, adulterated, diluted, substituted, invalid and cancelled tests became more prevalent. In fact, commencing in the late 90's, the Industry was essentially forced to change its test result nomenclature over time to reflect the new landscape. Positives and negatives began being referred to as negatives and non-negatives to reflect the number of test results possible.

The Anti-Drug Testing Product Industry is largely responsible for this change. It has become a significant obstacle to the efforts of the Drug and Alcohol Testing Industry because it has added a level of complexity that results and has presented additional, distracting and unnecessary challenges for Employers, Third Party Administrators supporting Employers' program administration, Collectors/Test Technicians, Laboratories, Medical Review Officers, and Substance Abuse Professionals.

Historically, there were only a few unusual specimens in the early days of drug testing. Adulterations did indeed occur. These were the exception, and though a challenge, they were not a huge problem programmatically. The true challenge for me as a Service Provider, Business woman, and attorney came with the advent of the adulterant nitrite, which results were believed to be the outcome of the availability of the product through the Internet. The nitrite product(s) resulted in challenges to the integrity of the testing process that took much time and effort to overcome and actually threatened the very viability and integrity of my business operation. Since the advent of nitrite adulteration, the Drug and Alcohol Testing Industry has been under siege by an explosion of adulteration products marketed through the Internet, detoxification products that encourage over hydration and likely account for the increase in dilute specimens, and appliances marketed for the specific purpose of assisting a cheating donor to carry in to the collection sites a substituted "clean" urine specimen.

To date, fourteen states have passed drug test falsification

legislation to address this threat to effective Drug Free Workplace Programs.

These states include:

1. Arkansas
2. Illinois
3. Kentucky
4. Louisiana
5. Maryland
6. Nebraska
7. New Jersey
8. North Carolina
9. Oklahoma
10. Oregon
11. Pennsylvania
12. South Carolina
13. Texas
14. Virginia

The scope of the prohibitions covered by these laws include attempts to defraud a drug test, manufacturing products intended to defraud a test, marketing products intended to defraud a test, transporting products intended to defraud a test and under the Illinois Statute, manufacturing or providing synthetic/human substances that defraud a drug test. These prohibitions are generally considered criminal misdemeanors of various degrees. They provide a range of fines from \$500 to \$5,000 and some provide for imprisonment. A couple of states have a

more serious penalty structure for a second offense. These statutes designate the crime as a felony rather than a misdemeanor, increase the monetary penalty (\$5,000 to \$10,000) and increase the possibility of imprisonment (3 to 5 years).

The significant downside to these state legislative initiatives are that

1) not enough States have passed legislation that addresses this national problem and 2) the laws do not include language that would enhance their effectiveness and enforceability. Specifically, a minority of fourteen states cannot effectively overcome an issue that is national in scope, and the laws do not include reporting requirements or protection for Collectors/Test Technicians, Laboratories, Medical Review Officers, and Employers that discover and report that the law has been violated.

### **Conclusion**

Fourteen state laws that have inconsistent language and do not address critical reporting and enforcement issues, do not adequately address a national objective as important as a Drug Free Workplace. Only a strong federal law that addresses reporting and enforceability can do so by curtailing and over time overcoming the efforts of the Anti-Drug Testing Industry that undercut and subvert the efforts of the Drug and Alcohol Testing Industry to assist Employers both Regulated and Non-Regulated to maintain a Drug Free Workplace. Simply put, an Industry that negatively impacts on the maintenance of a Drug Free Workplace must be derailed by effective federal legislation.

**Respectfully Submitted this 17<sup>th</sup> day of May, 2005**

**Josephine Elizabeth Kenney, J.D.**